

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Proposing rule making related to adoption expense deduction and tax credit  
and providing an opportunity for public comment**

The Department of Revenue hereby proposes to amend Chapter 41, “Determination of Taxable Income,” and Chapter 42, “Adjustments to Computed Tax and Tax Credits,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 421.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2016 Iowa Acts, House File 2468, and 2017 Iowa Acts, Senate File 433.

*Purpose and Summary*

The proposed amendments are necessary to implement changes to the adoption expense deduction and the adoption tax credit contained in 2016 Iowa Acts, House File 2468, and 2017 Iowa Acts, Senate File 433. As required by 2016 Iowa Acts, House File 2468, the proposed amendments provide for an increase in the adoption tax credit for tax years beginning on or after January 1, 2017. As required by 2017 Iowa Acts, Senate File 433, the proposed amendments change the entities that can permanently place an adopted child for purposes of the deduction and the credit.

*Fiscal Impact*

For tax year 2017, the adoption tax credit changes in 2016 Iowa Acts, House File 2468, will decrease state income tax revenues by an estimated \$342,000.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 6, 2018. Comments should be directed to:

Tim Reilly  
Department of Revenue  
Hoover State Office Building  
1305 East Walnut Street  
Des Moines, Iowa 50306  
Email: [tim.reilly@iowa.gov](mailto:tim.reilly@iowa.gov)  
Phone: 515.725.2294

### *Public Hearing*

No public hearing is scheduled at this time. An oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, an agency, or an association of 25 or more persons as provided in Iowa Code section 17A.4(1)“b.”

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 41.5(3), introductory paragraph, as follows:

**41.5(3)** Adoption expense deduction. Unreimbursed amounts paid by the taxpayer in the adoption of a child if placed by ~~a licensed agency under Iowa Code chapter 238, by an agency that meets the provisions of the interstate compact in Iowa Code section 232.158 or by a person making an independent placement~~ an adoption service provider under Iowa Code chapter 600, which exceed 3 percent of the taxpayer’s net income, or the combined net income of a husband and wife in the case of married taxpayers filing a joint return, will be allowed as a deduction in the year paid. Qualifying expenses include all medical, hospital, legal fees, welfare agency fees, and all other costs relating to the adoption of a child. Those expenses claimed for adoption purposes may not be claimed elsewhere on the individual income tax return for tax years beginning before January 1, 2014. For tax years beginning on or after January 1, 2014, an adoption tax credit equal to ~~the first \$2,500 of~~ certain qualified adoption expenses can be claimed in accordance with rule 701—42.52(422), but the expenses claimed for the credit cannot be allowed as a deduction under this subrule.

ITEM 2. Amend rule 701—42.52(422) as follows:

**701—42.52(422) Adoption tax credit.** Effective for tax years beginning on or after January 1, 2014, an adoption tax credit is available for individual income tax equal to the amount of qualified adoption expenses paid or incurred by a taxpayer during the tax year related to the adoption of a child ~~during the tax year, not to exceed \$2,500 per adoption. For an adoption finalized on or after January 1, 2014, but before January 1, 2017, the total adoption tax credit claimed for the adoption may not exceed \$2,500. For an adoption finalized on or after January 1, 2017, the total adoption tax credit claimed for the adoption may not exceed \$5,000.~~

**42.52(1) Definitions.** The following definitions are applicable to this rule:

*“Adoption”* means ~~the permanent placement in Iowa of a child by the department of human services, by a licensed agency under Iowa Code chapter 238, by an agency that meets the provision of the interstate compact in Iowa Code section 232.158, or by a person making an independent placement according to the provisions of Iowa Code chapter 600.~~

*“Child”* means an individual who is under the age of 18 years.

~~“Qualified adoption expenses” means unreimbursed expenses paid or incurred in connection with the adoption of a child, including medical and hospital expenses of the biological mother which are incident to the child’s birth, welfare agency fees, legal fees, and all other fees and costs related to the adoption of a child. Expenses which are eligible for the federal adoption credit as provided in Section 23(d)(1) of the Internal Revenue Code will be considered qualified adoption expenses. Expenses paid or incurred in violation of state or federal law are not qualified adoption expenses.~~

**42.52(1) Adoption.** For purposes of the credit, an adoption occurs when a child is permanently placed in Iowa by any of the following:

- a. The department of human services;
- b. An adoption service provider as defined in Iowa Code section 600A.2; or
- c. An agency that meets the provisions of the interstate compact in Iowa Code section 232.158.

**42.52(2) Child.** A “child” is an individual who is under the age of 18 years. “Child” does not include any individual who is 18 years of age or older.

**42.52(3) Qualified adoption expenses.**

a. Generally. “Qualified adoption expenses” means unreimbursed expenses paid or incurred in connection with the adoption of a child. Qualified adoption expenses include all fees and costs related to the adoption of a child, such as:

- (1) Medical and hospital expenses of the biological mother that are incident to the child’s birth;
- (2) Welfare agency fees and other reasonable and necessary adoption fees;
- (3) Court costs, attorney fees, and other legal fees;
- (4) Travel expenses, including amounts spent for meals and lodging while away from home; and
- (5) All other fees and costs related to the adoption of a child.

b. Limitations. Expenses that are eligible for the federal adoption credit as provided in Section 23(d)(1) of the Internal Revenue Code will be considered qualified adoption expenses. Expenses paid or incurred in violation of state or federal law are not qualified adoption expenses. Expenses that have been reimbursed are not qualified adoption expenses.

**42.52(2) 42.52(4) Claiming the credit.** The

a. Amount eligible for credit. For tax years beginning on or after January 1, 2014, but beginning before January 1, 2017, the first \$2,500 of qualified adoption expenses is eligible for the credit. For tax years beginning on or after January 1, 2017, the first \$5,000 of qualified adoption expenses is eligible for the credit. The maximum credit amount is determined at the time the adoption becomes final. If the qualified adoption expenses are less than \$2,500 the maximum credit amount, then the total amount of qualified expenses can be claimed as a credit. The amount of tax credit claimed cannot be used as an itemized deduction for adoption expenses provided in 701—subrule 41.5(3).

b. Claiming the credit in the year the adoption becomes final. To claim an adoption tax credit, a taxpayer must claim the credit for all qualified adoption expenses paid or incurred in the tax year the adoption becomes final, up to the maximum credit amount provided in paragraph 42.52(4) “a.”

EXAMPLE: Michael and Lori are married. Michael and Lori adopt a child who is permanently placed in Iowa. The adoption process begins and becomes final in 2015. Because the adoption becomes final on or after January 1, 2014, but prior to January 1, 2017, Michael and Lori qualify for a maximum credit amount of \$2,500. Michael and Lori incur and pay unreimbursed qualified adoption expenses of \$20,000 in 2015. Michael and Lori jointly file their Iowa individual income tax return in 2015. Michael and Lori may claim an Iowa adoption tax credit of \$2,500 in 2015.

c. Claiming the credit in years other than the year the adoption becomes final. If a taxpayer cannot claim the maximum credit amount provided in paragraph 42.52(4) “a” for the year the adoption becomes final, the taxpayer may amend a prior year return to claim any remaining credit for expenses paid in that prior year, or the taxpayer may claim any remaining credit on a subsequent year’s return for expenses paid in that subsequent year. If a qualified adoption expense was incurred in one tax year and paid in another tax year, the taxpayer may only claim a credit for that expense in one year. The total adoption tax credit claimed for all years combined may not exceed the maximum credit amount per adoption provided in paragraph 42.52(4) “a.” An adjustment to a prior year return is subject to the limitations in rule 701—40.20(422).

EXAMPLE: Erin adopts a child as a single parent. The child is permanently placed in Iowa. The adoption process begins in 2016 and becomes final in 2017. Because the adoption becomes final on or after January 1, 2017, Erin qualifies for a maximum credit amount of \$5,000. Erin pays and incurs unreimbursed qualified adoption expenses of \$20,000 in 2016 and \$1,000 in 2017. In tax year 2017, Erin may claim an Iowa adoption tax credit equal to the \$1,000 in unreimbursed qualified adoption expenses paid and incurred in 2017. After claiming the credit for tax year 2017, Erin may amend the 2016 return to claim the remaining \$4,000 credit for unreimbursed qualified adoption expenses paid and incurred in 2016.

d. *Claiming the credit by two adoptive parents.* The adoption tax credit may only be claimed by a person who adopted the child. When a married couple adopts a child together and the couple files jointly on the same return, the credit may only be claimed once between the couple. When any other two persons adopt a child together, including married persons filing separately on the same or different returns or any unmarried persons filing on separate returns, the credit must be divided between the adoptive parents. Two adoptive parents, other than persons who are married filing jointly, may agree to divide the credit in any way. The total adoption tax credit claimed for all years by both parents combined may not exceed the maximum credit amount per adoption provided in paragraph 42.52(4) “a.”

EXAMPLE: Peyton and Kerry are unmarried individuals. Peyton and Kerry adopt a child together. The child is permanently placed in Iowa. The adoption process begins and ends in 2018. Because the adoption becomes final on or after January 1, 2017, Peyton and Kerry qualify for a maximum credit amount of \$5,000. However, Peyton and Kerry pay and incur unreimbursed qualified adoption expenses of only \$3,000 in 2018. Accordingly, Peyton and Kerry may claim an Iowa adoption tax credit of \$3,000 in 2018, which must be divided between them. Peyton and Kerry agree that Peyton will claim \$2,000 of the credit, and Kerry will claim \$1,000 of the credit.

e. *Adoption of a special needs child.* If a taxpayer adopts a special needs child, the credit under this rule cannot exceed the amount of qualified adoption expenses paid or incurred by the taxpayer during the tax year. The amount of the federal adoption tax credit claimed for the adoption of a special needs child does not affect the amount of the credit under this rule.

EXAMPLE: Francis and Mandy are married. Francis and Mandy adopt a special needs child who is permanently placed in Iowa. The adoption process begins and ends in 2017. Francis and Mandy paid and incurred \$2,000 in unreimbursed qualified adoption expenses related to the adoption during 2017. For federal purposes, Francis and Mandy qualify for a maximum adoption tax credit of \$13,570 for the adoption of a special needs child. For Iowa purposes, Francis and Mandy qualify for a maximum adoption tax credit of \$2,000, which is equal to the amount of unreimbursed qualified adoption expenses they paid or incurred related to the adoption during the tax year.

f. *Adoption tax credit in excess of tax liability.* Any credit in excess of the taxpayer’s tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year. ~~The amount of tax credit claimed cannot be used as an itemized deduction for adoption expenses provided in 701—subrule 41.5(3).~~

This rule is intended to implement 2014 Iowa Acts, House File 2468 Iowa Code section 422.12A as amended by 2016 Iowa Acts, House File 2468, and 2017 Iowa Acts, Senate File 433.